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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BAYKEEPER,

Plaintiff(s),

No. C 07-1550 PJH

v.

GRANITE ROCK COMPANY,

Defendant(s).

**CASE MANAGEMENT
AND PRETRIAL ORDER**

Good cause appearing, the court hereby adopts the case management statement of the parties except as modified by the following:

PRETRIAL SCHEDULE

TRIAL DATE: Monday, **June 1, 2009**, at 8:30 a.m., Courtroom 3, 17th Fl.
JURY [x](Liability) COURT [x] (Remedy)

TRIAL LENGTH: No more than **8** days.

PRETRIAL CONFERENCE DATE: **May 7, 2009**, at 2:30 p.m.

DISPOSITIVE MOTIONS (Only one summary judgment motion per party is permitted without leave of court) TO BE HEARD BY: **January 14, 2009**.

NON-EXPERT DISCOVERY CUTOFF: **March 10, 2008**.

DISCLOSURE OF EXPERTS (retained and non-retained) : **April 7, 2008**.
REBUTTAL: **May 26, 2008**.

EXPERT DISCOVERY CUTOFF: **September 15, 2008** .

DISCOVERY LIMITATIONS:

Interrogatories:	Requests for Documents:
Depositions:	Requests for Admissions:

DISCOVERY DISPUTES REFERRED TO MAGISTRATE JUDGE AFTER MOTION IS FILED.

LAST DAY TO AMEND PLEADINGS: **November 19, 2007**.

[] SETTLEMENT CONFERENCE with Magistrate Judge during, , or as soon thereafter as is convenient for the assigned judge.

[x] REFERRED TO ADR FOR Mediation to be completed by November 16, 2007.

[] Certification of interested entities or persons (L.R. 3-16) to be filed in 10 days.

ADDITIONAL ORDERS: The court bifurcates liability and remedy. Liability to be tried to a jury and remedy to be tried to the court.

PRETRIAL INSTRUCTIONS

1 A. PRETRIAL MOTIONS

2 1. All dispositive motions are heard **no later than 120 days before trial**, unless leave
 3 of court is obtained for another deadline.

4 2. Only **one** summary judgment motion may be filed by each side, absent leave of
 5 court. Leave of court may be sought if multiple parties comprise one or both sides. Leave of
 6 court may be obtained by filing a motion for administrative relief pursuant to Civ. L. R. 7-11,
 7 or by requesting a case management conference or informal telephone conference.

8 3. **Separate** statements of undisputed facts in support of or in opposition to motions
 9 for summary judgment shall NOT be filed. See Civil L. R. 56-2. The parties may file a truly
 10 **joint** statement of undisputed facts only if all parties agree that the facts are undisputed.

11 4. Each party filing or opposing a motion shall also serve and file a proposed order
 12 which sets forth the relief or action sought and a short statement of the rationale of decision,
 13 including citation of authority that the party requests the court to adopt. The failure of a party
 14 to file an opposition to any motion shall constitute a consent to the granting of the motion.

15 5. Footnotes in briefs appearing in smaller than the 12-point font required for the text,
 16 will be stricken, see Civil L. R. 3-4(c)(2), as will footnotes that are so numerous as to be clearly
 17 designed to defeat the page limits found at Civil L. R. 7-2 - 7-4.

18 6. Motions pursuant to Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579
 19 (1993), challenging the reliability of expert testimony, may be noticed for hearing on the date
 20 dispositive motions will be heard or on any available hearing date up to and including the date
 21 of the final pretrial conference. Irrespective of the hearing date, the briefs shall be filed in
 22 accordance with Civil L. R. 7-2 - 7-5, on a 35-day briefing schedule.

23 7. Briefing schedules for motions that are specifically set by the court may not be
 24 altered by stipulation; rather the parties must obtain leave of court.

25 8. Motions *in limine* are limited to motions to exclude specific items of evidence on a
 26 ground and upon such authority as would be sufficient to sustain an objection to such evidence
 27 at trial. The court will not generally consider a motion presenting a purely legal issue in the
 28 guise of a motion *in limine*.

29 9. Discovery motions will be referred to a Magistrate Judge for resolution. The words
 30 "Discovery Matter" shall appear in the caption of all documents relating to discovery to insure
 31 proper routing.

32 10. Confidential and/or sealed documents shall be handled in accordance with this
 33 court's standing order and Civil L.R. 79-5, both of which the parties shall consult before moving
 34 for a protective order or requesting a sealing order. Requests to seal documents used in
 35 conjunction with dispositive motions are rarely granted and then only upon a showing of the
 36 most compelling of reasons.

37 B. FINAL PRETRIAL CONFERENCE

38 1. Each party shall attend personally or by counsel who will try the case.

39 2. **Not less than forty (40) calendar days** prior to the pretrial conference, all counsel
 40 and/or parties shall meet and confer regarding preparation of the joint pretrial statement.

1 3. Not less than thirty (30) calendar days prior to the pretrial conference, counsel
 2 and/or parties shall:

3 a. Serve and file a **joint** pretrial statement. (Separately filed statements will
 4 not be accepted by the court and monetary sanctions will be imposed
 5 upon the party failing to cooperate in the preparation of a joint statement).

6 The pretrial statement shall include the disclosures required by Fed. R.
 7 Civ. P. 26(a)(3) as well as the following:

- 8 (I) A brief description of the substance of the claims and defenses
 9 which remain to be decided.
 10 (ii) A detailed statement of all relief sought, itemizing all elements of
 11 damages claimed.
 12 (iii) A statement of all relevant undisputed facts to which the parties
 13 will stipulate for incorporation into the trial record without the
 14 necessity of supporting testimony or exhibits.
 15 (iv) A statement of all relevant disputed facts which remain to be
 16 decided.
 17 (v) A statement of stipulations requested or proposed.
 18 (vi) A brief statement of disputed points of law concerning liability and
 19 relief. Legal argument on these points shall be reserved for the
 20 trial briefs.
 21 (vii) A statement of whether bifurcation or a separate trial of specific
 22 issues is feasible and desired.
 23 (viii) A statement summarizing the status of settlement negotiations and
 24 indicating whether further negotiations are likely to be productive.

25 b. Serve and file trial briefs (not to exceed 25 pages), which shall specify
 26 each cause of action and defense remaining to be tried along with a
 27 statement of the applicable legal standard (no opposition shall be filed);

28 c. Serve and file motions *in limine*, which shall be contained in one
 29 document and shall not exceed 25 pages;

30 d. Serve and file a list of deposition excerpts for witnesses who will not
 31 testify in person, (specifying the witness, page and line references) and
 32 other discovery responses that will be offered at trial;

33 e. Serve and file a list of all witnesses to be called at trial, in person or by
 34 deposition, other than solely for impeachment or rebuttal, with a brief
 35 statement describing the substance of the testimony to be given;

36 f. Serve and file a numerical list of exhibits that will be offered as evidence
 37 in a party's case in chief in support of a claim or defense, with a brief
 38 statement describing the substance and purpose of each exhibit and the
 39 name of the sponsoring witness;

40 g. Exchange exhibits which shall be premarked with an exhibit sticker
 41 (example attached), tabbed and in binders. Plaintiff shall use numbers (1,
 42 2, 3, etc.) and defendant shall use numbers preceded by a letter (A-1, A-2,
 43 A-3, etc.). Additional parties shall also use a letter preceding numbers (B-
 44 1, B-2, B-3, or C-1, C-2, C-3, etc.).

45 h. Submit two sets for jury trials and three sets for court trials of all
 46 premarked exhibits to the Clerk's Office (exhibits are not filed);

- 1 i. Serve and file any request regarding the treatment of confidential or
2 sealed documents.
- 2 j. Serve and file proposed joint voir dire questions and joint jury instructions
3 for cases to be tried by jury;
- 3 k. Serve and file proposed findings of fact and conclusions of law for cases
4 to be tried by the court.
- 5 l. Serve and file a proposed verdict form which contains no reference to
6 submitting party.

7 4. No party shall be permitted to call any witness or offer any exhibit in its case in chief
8 that is not disclosed in these pretrial filings without leave of court and for good cause.

9 5. **Not less than fifteen (15) calendar days** prior to the pretrial conference, counsel
10 and/or parties shall serve and file any opposition to a motion *in limine*. No replies shall be filed.
11 All motions shall be heard at the pretrial conference unless otherwise ordered. The parties shall
12 not file separate objections, apart from those contained in the motions *in limine*, to the opposing
13 party's witness list, exhibit list or discovery designations.

14 C. JURY TRIAL

15 Jury Selection shall proceed as follows: The Jury Commissioner will summon 20 to 25
16 prospective jurors. The Courtroom Deputy will select their names at random and seat them in
17 the courtroom in the order in which their names are called. Voir dire will be conducted of
18 sufficient venire members so that six to eight will remain after all peremptory challenges and
19 an anticipated number of hardship dismissals and cause challenges have been made.

20 The court will then take cause challenges and discuss hardship claims at side bar. The
21 court will inform counsel which hardship claims and cause challenges will be granted, but will
22 not announce those dismissals until the selection process is completed. Peremptory challenges
23 will be made in writing and passed between counsel. The court will strike at one time those with
24 meritorious hardship claims, those excused for cause, and those challenged peremptorily, and
25 then seat the first six to eight people remaining in numerical order.

26 The attached voir dire questionnaire shall be given to the venire members and copies
27 of the responses will be made available to counsel at the beginning of voir dire. Counsel shall
28 submit a **joint set** of additional voir dire questions to be posed by the court. Any voir dire
 questions on which counsel cannot agree may be submitted separately. Counsel will be
 permitted brief follow-up voir dire after the court's questioning.

29 The following jury instructions from the Ninth Circuit Manual of Model Jury Instructions
30 Civil (2007 Edition) shall be given absent objection: 1.0 - 1.4, 1.6 - 1.14, 1.18 - 1.19, 3.1 - 3.4.
31 Counsel shall submit a **joint set** of case specific instructions using the Ninth Circuit Manual
32 where appropriate. Do not submit duplicates of those instructions listed above. Any
33 instructions on which counsel cannot agree may be submitted separately. Each instruction shall
34 be typed in full on a separate page with citations to the authority upon which it is based **and** a
35 reference to the party submitting it. A second blind copy of each instruction shall also be
36 submitted omitting the citation to authority and the reference to the submitting party, but
37 retaining the title of the instruction.

1 D. TRIAL SCHEDULE

2 The court's trial schedule is 8:30 a.m. to 1:30 p.m. with two fifteen-minute breaks, on
3 Monday, Tuesday, Thursday and Friday.

4 E. PROCEDURE FOR AMENDING THIS ORDER

5 No provision of this order may be changed except by written order of this court upon its
6 own motion or upon motion of one or more parties made pursuant to Civil. L. R. 7-11 with a
7 showing of good cause. Parties may file a formal brief, but a letter brief will suffice. The
8 requesting party shall serve the opposing party on the same day the motion is filed and the
9 opposing party shall submit a response as soon as possible but no later than three days after
10 service.

11 If the modification sought is an extension of a deadline contained herein, the motion must
12 be brought before expiration of that deadline. **The parties may not modify the pretrial
13 schedule by stipulation.** A conflict with a court date set after the date of this order does not
14 constitute good cause. The parties are advised that if they stipulate to a change in the discovery
15 schedule, they do so at their own risk. The only discovery schedule that the court will enforce
16 is the one set in this order.

17 IT IS SO ORDERED.

18 Dated: 8/24/07



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20 PHYLLIS J. HAMILTON
21 United States District Judge

CONFIDENTIAL

JUROR QUESTIONNAIRE

Please fill out this form as completely as possible and print clearly. This will assist the judge and the lawyers in selecting a jury and will save time for them and for you. Because copies will be made for the attorneys and the judge, do not write on the back of any page. If you need more room, continue at the bottom of the page. Thank you for your cooperation.

1. Your name: _____

2. Your age: _____

3. City in which you reside: _____

4. If you have lived there for fewer than five years, where did you live before:

10

5. Your place of birth: _____

6. Your marital status: (circle one)

single married separated divorced widowed

7. What is your occupation and how long have you worked in it? (If you are retired, please describe your main occupation when you were working).

¹⁰ See, for example, the discussion of the 1992 Constitutional Convention in the *Constitutional Convention of 1992: The Final Report* (1993).

10

8. Who is (or was) your employer?

19. If you have held this job for fewer than five years, describe your previous job:

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10. If you are married, please list your spouse's occupation.

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11. If you have children, please list their ages and genders and, if they are employed,

24 give their occupations.

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12. Please describe your education background:

1 Highest grade completed: _____

2 College and/or vocational schools you have attended:

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6 Major areas of study: _____

7 13. Have you served in the military? _____

8 14. Have you ever had jury experience? _____ No. of times? _____

9 If yes: State/County Court _____ Federal Court _____

10 When? _____

11 Was it a civil or criminal case? _____

12 Did any of the juries reach a verdict? _____

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Case #: PLNTF EXHIBIT NO. _____
Date Admitted: _____
By: _____
Deputy Clerk

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: _____
DEFT EXHIBIT NO. _____
Date Admitted: _____
By: _____
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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